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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,827	01/11/2002	Sally Kay Swart	163.1386USU/1	7890

23552 7590 08/31/2004
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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,827

Applicant(s)

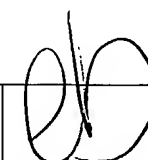
SWART ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,8-11,14-17 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8-11,14-17 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on July 27, 2004 for an RCE based on parent Application No. 10/043,827 is acceptable and an RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-3, 8-11, and 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1 recites "wherein said irradiation step **comprises** at least one of:". It is not clear whether other irradiation methods and ranges can be used, or not.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1-3, and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Hilgren et al [Pat. No. 6,514,556].

Hilgren et al teach a method of treating poultry by contacting it with peroxyacetic acid (column 6, line 7), peroxyoctanoic acid (column 6, line 9), densified versions of each (column 9, lines 36-60), it being irradiated with less than 0.3 kGy, namely 0 kGy, an inherent reduction of microbial content of at least 0.3 log₁₀, and packaging (column 19, line 29).

7. Claim 48 is rejected under 35 U.S.C. 102(e) as being anticipated by Inglis et al [Pat. No. 6,265,006].

Inglis et al teach a method of treating food by contacting it with an antimicrobial agent such as hydrogen peroxide (column 3, line 36), the food being herbs and spices (column 2, line 34), and irradiation with less than 1.5 kGy, namely 0 kGy, and an inherent reduction of microbial content of at least 0.3 log₁₀.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilgren et al as applied above, in view of Welt et al [Pat. No. 5,400,382].

Hilgren et al teach the above mentioned concepts. Hilgren et al do not recite gamma radiation from cobalt 60 or cesium 137. Welt et al teach a method of treating food by irradiating it with less 0.3 kGy of gamma radiation from cobalt 60 or cesium 137 (column 1, lines 30-46). It would have been obvious to one of ordinary skill in the art to incorporate the gamma radiation of Welt et al into the invention of Hilgren et al since both are directed to methods of treating foods, since the purpose of Hilgren et al was to reduce microbial contamination of food (abstract), and since the gamma radiation of Welt et al would have provided a further means of sanitizing the poultry by eliminating insect pests (column 1, line 45).

10. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilgren et al, in view of Welt et al, as applied above, in view of JP 11339701A.

Hilgren et al and Welt et al teach the above mentioned concepts. Hilgren et al and Welt et al do not teach the use of tungsten or single-sided irradiation. JP 11339701A teaches a method of irradiating food by the use of a tungsten filament (abstract) and single-sided irradiation (Figure 6). It would have been obvious to one of ordinary skill in the art to incorporate the irradiating method of JP 11339701A into the invention of Hilgren et al, in view of Welt et al, since all are directed to methods of treating food, since Welt et al already included irradiating food (column 1, lines 30-46), and since the single-sided, tungsten beam of JP 11339701A (abstract) would have effectively provided the irradiation of Welt et al.

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11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tanaka et al [Pat. No. 4,983,411], Robinson Jr [Pat. No. 5,482,726], McFarland [Pat. No. 5,603,972], Liberman et al [Pat. No. 6,248,381] teach methods of irradiating food.

Response to Arguments


12. Applicant's arguments with respect to claims 1-3, 8-11, 14-17, and 48 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
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8-26-04